T.D. INFORMAL MEMO: DO NOT MAIL THIS MEMO TO APPLICANT

Date:			09-Oct-07	APPL. S. N:	10649473		
To Exan	niner:		CHAWAN, SHEELA C.	Art Unit	2624		
From			Gunter-Riley, Joyce PARALEGAL SPCECIALIST	Return This Memo To: Case Drop-Off Location	JEF-2D68		
SUBJEC	T: Decisio	on on Terminal	Disclaimer(T.D.) filed:				
form pa or have	ragraphs i any quest	identified by th tions, please se	is informal memo in your next (se me or the Special Program Ex	esults as set forth below. If you ag Office action to notify applicant of kaminer. THIS IS AN INFORMAL, I RECORD IN THE APPLICATION FI	the T.D. If you disagree		
please i	nitial, date	and return th	is memo to me. THANK YOU.				
V	The T.D.	is PROPER an	d has been recorded (see 14.23).			
<u> </u>	The T.D.	is NOT PROPE	R and has not been accepted fo	or the reason(s) checked below (s	ee 14.24):		
	Г	The TD fee of use of a depo		ed nor is there any authorization	in the application file for the		
	r.	The T.D. does not satisfy Rule 321 in that the person who has signed the T.D. has not stated the extent of his/her interest (and/or the extent of the interest of the business entity represented by the signature) in the application/patent (see 14.26 & 14.26.01).					
	Γ	The T.D. lacks double patent	s the enforceable only during co ring rejection, Rule 321(b) (see	nmmon ownership clause – neede 14.27.01).	d to overcome a non-statutory		
		The T.D. is di portion of the	rected to a particular claim(s), very term of the entire patent to be	which is not acceptable since "the granted" (MPEP 1490) (see 14.2)	disclaimer must be for a terminal 6 & 14.26.02).		
		The person w	ho signed the T.D.:				
		is no	ot an attorney "of record" (see 1	14.29 and 14.29.01).			
•		has	failed to state his/her capacity t	to sign for the business entity (se	e 14.28).		
		is no	ot recognized as an officer of the	e assignee (see 14.29 & possible	14.29.02).		
	Γ.	No documentary evidence of a chain of title from the original inventor(s) to assignee has been submitted, nor is the reel and frame number specified as to where such evidence is recorded in the Office (see 37 CFR 3.73(b) and 1140 O.G. 72). NOTE: This documentary evidence or the specifying of the reel and frame number may be found in the T.D. or in a separate paper of record in the application (see 14.30).					
	Г	The T.D. is no	ot signed (see 14.26 & 14.26.03	s).			
		The serial nur patenting reje	mber of the application (or the rection is missing or incorrect (se	number of the patent) which form ee 14.32).	s the basis for the double		
	Γ	The serial nur disclaimed is	mber of this application (or the i missing or incorrect (see 14.26,	number of the patent in reexam o . 14.27.02 or 14.26.05).	r reissue cases being		
	Γ:	The period dis	sclaimed is incorrect or not spec	cified (see 14.26, 14.27.02 or 14.3	26.03).		
	<u>[</u>	Other:			A		
	Γ	and do not ch	eck this item.	OTE: If already authorized, credit			
I have a	ppropriate	ely notified app	licant(s) of the status of the Te	rminal Disclaimer filed in this case	€.		
Ex.Initia	ls:	Date	e:		· Log Date:		

Application Number	Application/Control No.		Applicant(s)/Patent under Reexamination KLINGENSMITH ET AL.					
Document Code - DISQ		Internal Document – DO NOT MAIL						
TERMINAL DISCLAIMER	☑ APPROVED		☐ DISAPPROVED					
Date Filed : September 27, 2007	This patent is subject to a Terminal Disclaimer							
Approved/Disapproved by:								
Henry D. Jefferson								

U.S. Patent and Trademark Office

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent Application No. 10/649,473

Confirmation No. 5384

Applicant: Klingensmith et al.

Filed: August 26, 2003

TC/AU: 2624

Examiner: Sheela C. Chawan

Docket No.: 260442 (Client Reference No. 5010US)

Customer No.: 72286

Mail Stop Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

TERMINAL DISCLAIMER UNDER 37 CFR 1.321

Assignee, Cleveland Clinic Foundation, is the owner of 100 percent interest in the above-identified application (hereinafter "the present application").

Pursuant to 37 CFR 3.73(b), the assignment of the present application from the inventors, or chain of title from the inventors, to the Assignee was recorded in the Patent and Trademark Office at Reel 014440, Frame 0924, on August 26, 2003.

Also, pursuant to 37 CFR 3.73(b), the undersigned has reviewed all the evidentiary documents accompanying or referred to in this Terminal Disclaimer and, to the best of the undersigned's knowledge and belief, certifies that title is in the Assignee.

Assignee, through its attorneys and agents, hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the present application that would extend beyond the expiration date of the full statutory term defined in 35 USC 154 to 156 and 173 of U.S. Patent No. 6,381,350 B1 (hereinafter "the prior patent"), as shortened by any terminal disclaimer filed prior to the grant of the prior patent. Assignee, through its attorneys and agents, further agrees that any patent granted on the present application shall be enforceable only for and during such period that its legal title is the same as the legal title to

the prior patent, this agreement to run with any patent granted on the present application and to be binding upon the grantee, its successors, and assigns.

In making the above disclaimer, Assignee does not disclaim the terminal part of any patent granted on the present application that would extend to the expiration date of the full statutory term of the prior patent as defined in 35 USC 154 to 156 and 173 in the event the prior patent terminates prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer filed prior to the grant of the patent. Examples of such non-applicable termination of the prior patent are as follows: (1) prior patent expires for failure to pay a maintenance fee, (2) prior patent is held unenforceable, (3) prior patent is found invalid by a court of competent jurisdiction, (4) prior patent is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, (5) prior patent has all claims canceled by a reexamination certificate or reissuance, and (6) prior patent is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

In making this disclaimer, Assignee reserves the right to extend the term of any patent granted on the present application for a period of delay, in the event the delay is defined by statute and/or regulation as allowing, or providing for, an extension of term. This right is reserved in the event the prior patent terminates, or does not terminate, prior to the expiration of its full statutory term. Examples of such a delay include regulatory delay, and delay due to appellate review.

The undersigned is empowered to act on behalf of the Assignee.

The Commissioner is hereby authorized to charge to Deposit Account 12-1216 the fee of \$130.00 set forth in 37 CFR 1.20(d). A duplicate copy of this document is enclosed herewith for that purpose (unless submitted via EFS-Web).

Respectfully submitted,

Mark Joy, Reg. No. 35,562 LEYDIG, VOIT & MAYER, LTD.

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Date: September 27, 2007